

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

WP(C).No. 28024 of 2004(J)

PETITIONERS;

- 1. SHIBU. S., P.C. Q.4517,
SAKTHIKULNAGARA POLICE STATION, KOLLAM.**
- 2. CHANDRA BABU, P.C.Q.4516,
CHANDAYAMANGALAM POLICE STATION, KOLLAM.**
- 3. THYAGARAJAN, P.C.Q.3943,
KOTTARAKARA POLICE STATION, KOLLAM.**
- 4. SREEKUMAR, P.C.Q.4078,
OCHIRA POLICE STATION, KOLLAM.**
- 5. SATHEESAN PILLAI, P.C.Q.3865,
THENNALA POLICE STATION, KOLLAM.**
- 6. GANGADHARAN PILLAI, P.C.Q.3897,
PUNALUR POLICE STATION, KOLLAM.**
- 7. SASIDHARAN, P.C.Q.3895,
THENMALA POLICE STATION, KOLLAM.**
- 8. SURESH KUMAR, P.C.Q.3927,
PUNALUR POLICE STATION, KOLLAM.**
- 9. JOHNSON DANIEL, P.C.Q.4575,
VIGILANCE & ANTI-CORRUPTION BUREAU, KOLLAM.**
- 10. RADHAKRISHNAN PILLAI, P.C.Q.3858,
EZHUONE POLICE STATION, KOLLAM.**
- 11. RAJENDRAN, P.C.Q.3861,
KOTTARAKARA POLICE STATION, KOLLAM.**

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12. SREEKUMAR, P.C.Q.4331,
KUNDARA POLICE STATION, KOLLAM.
13. RADHAKRISHNAN, P.C.Q.4518,
TRAFFIC POLICE STATION, KOLLAM.
14. RAJENDRAN, P.C.Q.3898,
PALLITHOTTAM POLICE STATION, KOLLAM.
15. SIVAPRASAD, P.C.Q.3931,
SBCID, KOLLAM.
16. REGHUNATHAN UNNITHAN, P.C.Q.3922,
V.A.C.B., KOLLAM.
17. RAMACHANDRAN PILLAI, P.C.Q.3915,
ANCHAL POLICE STATION, KOLLAM.
18. DOMANIC, P.C.Q.3917, KARUNAGAPALLY
POLICE STATION, KOLLAM.
19. RAJU, P.C.Q.3909, KARUNAGAPPALLY POLICE
STATION, KOLLAM.
20. SUNIL, P.C.Q.4523,
PARAVOOR POLICE STATION, KOLLAM.
21. ASOKAN, P.C.Q.4544, KARUNAGAPALLY
POLICE STATION, KOLLAM.
22. UDYAKUMAR, P.C.Q.4619,
KARUNAGAPALLY POLICE STATION, KOLLAM.

BY ADV. SRI.SHABU SREEDHARAN
SRI.P.A.NOOR MUHAMMED

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RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
ITS SECRETARY, HOME (A) DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
2. THE SECRETARY, FINANCE (PAY REVISION
IMPLEMENTATION) DEPARTMENT, GOVERNMENT OF
KERALA, THIRUVANANTHAPURAM.
3. THE DIRECTOR GENERAL OF POLICE,
KERALA STATE, THIRUVANANTHAPURAM.
4. THE SUPERINTENDENT OF POLICE,
KOLLAM.

BY SPL. GOVERNMENT PLEADER (FINANCE)SRI.N.MANOJKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS:

**EXT.P1: COPY OF THE ORDER G.O.(MS) NO.234/99/HOME DTD.24/11/1999
ISSUED BY THE GOVERNMENT OF KERALA.**

**EXT.P2: COPY OF THE ORDER G.O.(MS) NO.174/2000/HOME DTD.
18/07/2000 ISSUED BY THE GOVERNMENT OF KERALA.**

1ST RESPONDENT'S EXHIBITS:

EXT.R1(A): COPY OF THE SERVICE DETAILS OF THE PETITIONERS.

**EXT.R1(B); COPY OF THE RELEVANT PORTION OF G.O.(P) NO.3000/98/FIN.
DTD. 25/11/1998.**

/TRUE COPY/

P.S.TO JUDGE

Kss

K. BALAKRISHNAN NAIR, J.

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JUDGMENT

The petitioners are Police Constables, working under the respondents. The Government issued Ext.P1 order dated 24.11.1999, ordering to grant Higher Grade to them, on completion of 10 years service. It was also ordered that the 10 years' Higher Grade will have effect from the date of effect of the last pay revision order issued as per G.O.(P) No.3000/98/Fin dated 25.11.98. Later, the Government issued Ext.P2 GO dated 18.7.2000, stating that the grade promotion granted under Ext.P1 can have retrospective effect only from 25.11.98. Before the issuance of Ext.P2, the petitioners were granted Higher Grade with retrospective effect from 1.3.1997. They were granted arrears of salary also. Now, as a result of Ext.P2, their pay will be reduced and recovery of the excess salary will also be made. So, this writ petition was filed, challenging Ext.P2.

2. The respondents have filed a counter affidavit, in which it is submitted that the 1998 pay revision does not have any particular date of effect. The revision of pay scales takes effect from 1.3.1997. The

Higher Grade granted under the pay revision order takes effect from 25.11.1998. Various other clauses of the pay revision order takes effect from 1.11.1998, as evident from para 38 (a) of the said order. So, the respondents contend that the benefit concerned in this case being one relating to grant of Higher Grade, the date of effect of the pay revision in relation to that benefit is 25.11.1998. Therefore, Ext.P2 has been rightly issued, it is submitted.

3. Heard. The learned counsel for the petitioners submitted that even assuming the stand of the respondents is correct, the recovery of excess salary paid to the petitioners is unjustified, in view of the decisions of the Apex Court in **Sahib Ram v. State of Haryana** [1995 Supp (1) SCC 18] and **P.H.Reddy & Ors. v. N.T.R.D. & Ors.** [JT 2002(2) SC 483]. The learned Government Pleader, on the other hand, relied on two Division Bench decisions of this Court in **Santhakumari v. State of Kerala** [2005(4) KLT 649] and **State of Kerala v. Saiful Islam** [2006(1) KLT 619].

4. I think the interpretation given in Ext.P2 regarding the date of

effect of Ext.P1 is valid. In view of Ext.P2, the salary of the petitioners is liable to be revised and refixed. The only point that survives for decision is whether the excess amount paid to them from 1.3.1997 to the date of Ext.P2 could be recovered by the Government. I think, there cannot be any hard and fast rule regarding recovery of the excess amount paid. When the amount has been paid long ago and there is considerable delay in finding out the mistake and recovering the amount, the courts have held that recovery after such long periods is not justified. In this case, within one year of the issuance of Ext.P1, the mistake was detected and rectified by Ext.P2. Further, the Director General of Police was also not sure about the date of effect of Ext.P1 order. Therefore, he moved the Government for appropriate clarification, to avoid audit objection. Immediately on finding the irregularity in Ext.P1, Ext.P2 order was issued. The money drawn by the petitioners is public money. The Government are its custodian. It, as soon as the detection of the irregularity, has stepped in by issuing Ext.P2 order. Therefore, I feel that it is not just or proper to order that the petitioners should be allowed to retain the amount paid to them in excess.

But, it is ordered that the amount shall be recovered in easy monthly instalments without any interest.

The Writ Petition is disposed of as above.

**K. BALAKRISHNAN NAIR,
JUDGE .**

18th July, 2007.
nm.